WP(C) 749/2004
BEFORE
THE HON'BLE MR JUSTICE A.H. SAIKIA
THE HON'BLE MR JUSTICE B.D. AGARWAL

The respondent Sri Sujit Suklabaidya was working as a peon in Kendriya Vidyalaya, Lekhapani, Silchar, Assam. The School was situated in Army Cantonment. In the last week of February 2002, the Joint Commissioner (Acad) received an anonymous telephonic message that few male staff of the School were misbehaving with girl students. Accordingly, the Joint Commissioner directed the principal of the School to make an enquiry. Accordingly the Principal of the school constituted a Committee of 3 (three) teachers to ascertain the truth in the allegation. Accordingly the Committee examined 13 girl students on 27.02.2002 of classes VII, VIII and IX and report was submitted to the School Authority on the same date. On that day few girls were not available in the school. Hence, three more such girl students were interviewed on the next date and another report was submitted to the principal of the School on 02.03.2002. After these two preliminary reports one formal Committee consisting of the Chairman of the School, namely, Major Rohitesh Kumar and School Teachers Mr. N.P. Singh and Mrs. S. G. Sood was constituted. This Committee recorded a statement of as many as 17 persons including the victim girls, the principle and others. After the enquiry the Committee submitted its findings and opinion holding that few students had implicated School teachers Mr. B.N. Paul, Mr. V.K. Yadav and two peons, namely, Mr. Sugreev Kewat and Mr. Sujit Suklabaidya. The aforesaid findings were accepted by the Chairman, Kendriya Vidyalaya, Lekhapani and recommended disciplinary action against the teachers and employees of the School for indulging and misconduct with girl students vide its order dated 04.03.2002. The enquiry reports dated 02.03.2002, 03.03.2002 and 05.03.2002 (sic) are marked as Annexure-1 to 3 in the writ petition.

2. Having found the teachers and staff of the School involving misconduct, show cause notices were issued to the indicted persons to show cause as to why disciplinary action should not be taken against them. Notice to the present respondent was issued on 02.03.2002 to which the respondent replied on 04.03.2002. After perusing all the evidence, the Commissioner of Kendriya Vidyalaya Sangathan terminated the services of the respondent Sri Sujit Suklabaidya vide order No. F.10-7/2002/KVS (VIG) dated 23.05.2002. It may be mentioned here that the Commissioner had dispensed with exhaustive procedure for disciplinary proceeding laid down under Central Civil Services (Classification, Control and Appeal) Rules, 1965 in exercise of his powers conferred under Article 81 (b) of the Education Code.

3. On receipt of the termination order dated 23.05.2002 the respondent prayed for review of the said order but this prayer was turned down on 15.05.2002. Thereafter, the respondent preferred an appeal before the learned Central Administrative Tribunal, Guwahati Bench, (the 'Tribunal' in brief). This appeal was registered as Original Application No. 357 of 2002. The learned Tribunal, after hearing both the parties and on perusal of records set aside the order of termination dated 23.05.2002 and directed the School authority to reinstate the applicant in service with all consequential benefits. Being aggrieved with this order of re-instatement, the Union of India and Kendriya Vidyalaya Sangathan has preferred this writ petition under Article 246 of the Constitution of India seeking a writ in the nature of certiorari and other appropriate direction.

4. We have heard Mr. S.C. Biswas, learned counsel for the petitioners. Sri R.K. Dutta appeared for the sole respondent. During the hearing, the learned counsel for the appellants also furnished copies of the statements of the girl students for perusal of this Court.

5. As noted earlier the enquiry was held in a summary procedure und

er Article 81 (b) in Chapter 8 of the Education Code. The relevant provision is extracted below:

\(b) Termination of Services of an Employee Found Guilty of Immoral Behaviour towards Students.
Wherever the Commissioner is satisfied after such a summary enquiry as he deems proper and practicable in the circumstances of the case that any member of the K endriya Vidyalaya is prima facie guilty of moral turpitude involving sexual offe nce or exhibition of immoral sexual behaviour towards any student, he can termin ate the services of that employee by giving him one month's or 3 month's pay and allowances according as the guilty employee is temporary or permanent in the se rvice of the Sangathan. In such cases procedure prescribed for holding enquiry for imposing major penalty in accordance with CCS (CCA) Rules, 1965 as applicabl e to the employee of the Kendriya Vidyalaya Sangathan, shall be dispensed with, provided that the Commissioner is of the opinion that it is not expedient to hol d regular enquiry on account of serious embarrassment to the student or his guar dians or such other practical difficulties. The Commissioner shall record in wr iting the reasons under which it is not reasonably practicable to hold such enqu iry and he shall keep the Chairman of the Sangathan informed of the circumstance s leading to such termination of services.\

6. In the aforesaid Article the Commissioner is the appropriate aut hority to dispense with the procedure of regular enquiry if he is of the opinion that any such open and exhaustive enquiry may cause embarrassment to the studen ts or their guardians or for such other practical difficulties in the case befor e us. The allegation of sexual mis-behaviour with girl students squarely falls within the sweep of Article 81 (b). We do not see any illigality in adopting the summary procedure for holding the enquiry involving minor girl students in sexu al exploitation. Truly speaking the learned Tribunal has also not held that the summary enquiry was without jurisdiction or that it was not warranted in the s ituation.

7. The learned Tribunal has set aside the termination order drawing on certain adverse presumptions against the school authority as well as holding that the respondent/applicant was entitled to benefit of doubt since the first enquiry report did not implicate him for any moral turpitude. The relevant find ing on the merit of the case rendered by the Tribunal is extracted below for rea dy reference:

\ We have given our anxious consideration in the matter. The materials on recor d including the alleged testimony of Alka Chhetri and Namita Rai made before the Court of enquiry headed by Major Rohitesh Kumar and the third enquiry held on 0 2.03.2002 even did not prima-facie indicate that the applicant was guilty of mor al turpitude involving sexual offence or exhibition of immoral sexual behaviour towards the students. Admittedly, there is no proof of any sexual offence or ex hibition of any immoral sexual behaviour.\

8. Before adverting to the factual correctness of the findings of t he learned Tribunal, we would like to mention here that the offence of sexual ha rassment at work place has been given a new shape and direction by the Hon'ble S upreme Court of India. In the internationally celebrated case of Vishaka & Ors. -Vs- State of Rajasthan & Ors. JT 1997 (7) SC 384; AIR 1997 SC 3011, the apex c ourt has expanded the definition of sexual harassment, holding that it would als o include:

a) Physical contact and advances;
b) A demand or request for sexual favours;
c) Sexually coloured remarks;
d) Showing pornography;
e) Any other unwelcome physical, verbal or non-verbal conduct of sexual n

ature.

9. It is true that in the aforementioned case the Hon'ble Supreme Court has given elaborate guidelines to take preventive steps and deal with allegations of sexual harassment at work place against working women. However, the underlying message of the authority is that the entire environment at work places should be free from sexual harassment. After the judgment of the Apex Court in the case of Vishaka (supra) the guilt of moral turpitude need not confine to substantive sexual harassment. To say differently any un-natural behaviour by a male staff with women in the work place connected with sexual activity would bring the offence within the parameters of moral turpitude. Unfortunately this progressive judgment by the Apex Court has gone un-noticed by the Tribunal.

10. Coming through the evidence of sexual harassment, we find that at last two girl students of the School, namely, Alka Chhetri and Namita Rai have explicitly indicted the present respondent in their sexual harassment. The relevant part of these two girl students have been reflected in the impugned judgment which we would also like to reproduce in the present judgment for better appreciation and understanding the gravity of the case. The statements of Alka Chhetri is as follows:

\ I also want to narrate a particular act of mis-behaviour of Mr. S.S. Bidya, a group D employee of our school. Last year when I was in class VIII; in the month of November, we went for a class picnic without informing the school authorities within Lekhapani cantt. This act of ours was reported to the school authorities. Our parents were called to give explanation and apologize to the school, that the incident will not be repeated in future by their words. My mother was sitting in the clerks room adjoining principal office o write the applications. I was told by Mr. S.S. Baidya to sit outside. As I moved outside, he followed me. As we stopped out of room, he pressed my breasts while stating \don't worry noting will happen\ and words to that effect in Hindi. I felt very bad at that particular moment.\

Incriminating part of the statement of Namita Rai, a student of class IX is also extracted below:

10.1 \ I also have problems with Mr. S.S. Baidya who is a group 'D' employee of our school. He has always been trying to misbehave with me. He passes comments on seeing me. Once when I was coming to school along with my friend Arpana, he said \come, I will treat you with hot samosa\ and words to that effect in Hindi. He even tried to hold me with his hand, and at times holds my shoulder. I try and avoid his as and when I see him.

11. A bare perusal of the above two statements leave no scope for critical analysis to say that it is a clear case of sexual harassment. In our considered opinion the statements clearly makes out a case of moral turpitude and sexual harassment in the context of wider definitions of the said offence given in the case of Vishaka (supra). The learned Tribunal has given emphasis for disbelieving the said statements particularly on the ground that these two girl students did not implicate the respondent in their earlier statements for obscure reasons. However, we find from the record that the aforesaid students have satisfactorily given reasons for not disclosing the fact of sexual harassment earlier. We are of the view that even if it was given belatedly on persuasion no doubt about its truthfulness can be drawn.

12. From the set of documents submitted by the learned counsel for the petitioners, we find that the statements of Alka Chhetri and Namita Rai were recorded thrice. On the first occasion statements of about one dozen girl students were recorded. Few of them remained totally silent, whereas few students imp

licated only two teachers of the school. However, in the second and third statements of Namita Rai and Alka Chhetri they also implicated the respondent Sri Sujit Suklabaidya. We have already mentioned earlier that the entire enquiry in three stages took only one-week time. The principal of the School has clarified that second statement of the girls in the preliminary enquiry had to be recorded to find out the actual truth. Had it been a case of trying an accused for a criminal offence certainly the court would have taken a serious note of the so-called improvement in the statements. However, in the matter of allegation of sexual harassment against teachers and employees with teenaged girl students, the same standard of criminal trial, which requires proof of allegations beyond all reasonable doubt, can not be adopted. The observation of the learned Tribunal that it appears \that the alleged enquiry was made to implicate the applicant\ does not appear to be acceptable to us in the facts and circumstances of the case.

13. The learned Tribunal has also taken exception for holding two enquiries and recording the statements of the students repeatedly. On this basis the Tribunal has held that the authorities, after getting materials against the teachers, also tried to rope in more persons by all means. We respectfully disagree with the aforesaid presumption of the learned Tribunal in as much as there is no material on record to indicate that either the students or their parents had any enmity or grudge against the present respondent. Besides this, the principal of the school had also clarified before the formal enquiry committee that the second statement of few girl students had to be recorded since the first preliminary report dated 27.02.2002 did not give positive findings. In our consider opinion the explanation of the principal for recording additional statements of the victim girls is plausible and does not suffer from any vice or malafide action. At this stage, we would like to make it clear the preliminary report dated 02.03.2002 does not reflect the name of Namita Rai, although she had given indictable statement. Similarly the allegations made by Alka Chhetri have also not been extracted in extenso in the said report. This may be un-intentional error. However, we are of the opinion that any report cannot supersede the evidence on record. In the present case, we find that Namita Rai had alleged that the respondent Sri Sujit Suklabaidya used to tease her and touch her body under certain pretext, which she did not like. However, this statement was dropped from the preliminary report. Similarly the allegation of Alka Chhetri regarding fondling of her breasts has also been omitted from the report, although the finding has been given that the respondent was involved in sexual offence and misbehavior with girl students. Be that as it may, the second Committee has given a clear finding of sexual harassment on the basis of the statements of above two students against the present respondent.

14. Educational Institutions are the platform for teaching moral values. These are the places where the future of the society is given a shape. Hence, it is necessary that the entire environment of educational institutions should be free from all kinds of pollution. No authority can be permitted to dilute the standard of moral behaviour of teachers and employees of schools to any extant. Having regard to the gravity and seriousness of the allegations against the respondent, supported by statements of teenaged girls, we are unable to approve the decision taken by the learned Tribunal with due respect.

15. In the result and for the reasons alluded hereinabove the writ petition is accepted the impugned judgment and order dated 31.10.2003 passed by the Central Administrative Tribunal. Guwahati Bench in O.A. No. 357 of 2002 stands set aside. Consequently the order of termination of services of the respondent dated 23.05.2002 is hereby restored.